



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2613

Introduced 1/20/2006, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

720 ILCS 5/31A-1.1	from Ch. 38, par. 31A-1.1
720 ILCS 5/31A-1.2	from Ch. 38, par. 31A-1.2

Amends the Criminal Code of 1961. Re-enacts the provisions of Public Act 89-688 relating to bringing contraband into a penal institution; possessing contraband in a penal institution; and unauthorized bringing of contraband into a penal institution by an employee. (Public Act 89-688 was held unconstitutional as violating the single subject clause of the Illinois Constitution). Effective immediately.

LRB094 16170 RLC 51412 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Findings; purpose.

5 (a) The General Assembly finds and declares that:

6 (1) Public Act 89-688, effective June 1, 1997,
7 contained provisions amending Sections 31A-1.1 and 31A-1.2
8 of the Criminal Code of 1961 relating to bringing
9 contraband into a penal institution; possessing contraband
10 in a penal institution; and unauthorized bringing of
11 contraband into a penal institution by an employee. Public
12 Act 89-688 also contained other provisions.

13 (2) On October 20, 2000, in *People v. Jerry Lee Foster*,
14 316 Ill. App. 3d 855, the Illinois Appellate Court, Fourth
15 District, ruled that Public Act 89-688 violates the single
16 subject clause of the Illinois Constitution (Article IV,
17 Section 8 (d)) and is therefore unconstitutional in its
18 entirety. The Illinois Supreme Court agreed with the
19 reasoning of that court in *People v. Burdunice*, 211 Ill. 2d
20 264 (2004).

21 (3) The provisions added to Sections 31A-1.1 and
22 31A-1.2 of the Criminal Code of 1961 by Public Act 89-688
23 are of vital concern to the people of this State. Prompt
24 legislative action concerning those provisions is
25 necessary.

26 (4) Section 31A-1.1 of the Criminal Code of 1961 has
27 subsequently been amended by Public Act 94-556. Section
28 31A-1.2 of the Criminal Code of 1961 has subsequently been
29 amended by Public Acts 90-655, 91-357, and 94-556.

30 (b) It is the purpose of this Act to re-enact Sections
31 31A-1.1 and 31A-1.2 of the Criminal Code of 1961, including the
32 provisions added by Public Act 89-688 and the subsequent
33 amendment to Section 31A-1.1 by Public Act 94-556 and

1 subsequent amendments to Section 31A-1.2 by Public Acts 90-655,
2 91-357, and 94-556. This re-enactment is intended to remove any
3 question as to the validity or content of those provisions; it
4 is not intended to supersede any other Public Act that amends
5 the text of the Sections as set forth in this Act. The
6 re-enacted material is shown in this Act as existing text
7 (i.e., without underscoring).

8 Section 5. The Criminal Code of 1961 is amended by
9 re-enacting Sections 31A-1.1 and 31A-1.2 as follows:

10 (720 ILCS 5/31A-1.1) (from Ch. 38, par. 31A-1.1)

11 Sec. 31A-1.1. Bringing Contraband into a Penal
12 Institution; Possessing Contraband in a Penal Institution.

13 (a) A person commits the offense of bringing contraband
14 into a penal institution when he knowingly and without
15 authority of any person designated or authorized to grant such
16 authority (1) brings an item of contraband into a penal
17 institution or (2) causes another to bring an item of
18 contraband into a penal institution or (3) places an item of
19 contraband in such proximity to a penal institution as to give
20 an inmate access to the contraband.

21 (b) A person commits the offense of possessing contraband
22 in a penal institution when he possesses contraband in a penal
23 institution, regardless of the intent with which he possesses
24 it.

25 (c) For the purposes of this Section, the words and phrases
26 listed below shall be defined as follows:

27 (1) "Penal institution" means any penitentiary, State
28 farm, reformatory, prison, jail, house of correction,
29 police detention area, half-way house or other institution
30 or place for the incarceration or custody of persons under
31 sentence for offenses awaiting trial or sentence for
32 offenses, under arrest for an offense, a violation of
33 probation, a violation of parole, or a violation of
34 mandatory supervised release, or awaiting a bail setting

1 hearing or preliminary hearing; provided that where the
2 place for incarceration or custody is housed within another
3 public building this Act shall not apply to that part of
4 such building unrelated to the incarceration or custody of
5 persons.

6 (2) "Item of contraband" means any of the following:

7 (i) "Alcoholic liquor" as such term is defined in
8 Section 1-3.05 of the Liquor Control Act of 1934.

9 (ii) "Cannabis" as such term is defined in
10 subsection (a) of Section 3 of the Cannabis Control
11 Act.

12 (iii) "Controlled substance" as such term is
13 defined in the Illinois Controlled Substances Act.

14 (iii-a) "Methamphetamine" as such term is defined
15 in the Illinois Controlled Substances Act or the
16 Methamphetamine Control and Community Protection Act.

17 (iv) "Hypodermic syringe" or hypodermic needle, or
18 any instrument adapted for use of controlled
19 substances or cannabis by subcutaneous injection.

20 (v) "Weapon" means any knife, dagger, dirk, billy,
21 razor, stiletto, broken bottle, or other piece of glass
22 which could be used as a dangerous weapon. Such term
23 includes any of the devices or implements designated in
24 subsections (a)(1), (a)(3) and (a)(6) of Section 24-1
25 of this Act, or any other dangerous weapon or
26 instrument of like character.

27 (vi) "Firearm" means any device, by whatever name
28 known, which is designed to expel a projectile or
29 projectiles by the action of an explosion, expansion of
30 gas or escape of gas, including but not limited to:

31 (A) any pneumatic gun, spring gun, or B-B gun
32 which expels a single globular projectile not
33 exceeding .18 inch in diameter, or;

34 (B) any device used exclusively for signaling
35 or safety and required as recommended by the United
36 States Coast Guard or the Interstate Commerce

1 Commission; or

2 (C) any device used exclusively for the firing
3 of stud cartridges, explosive rivets or industrial
4 ammunition; or

5 (D) any device which is powered by electrical
6 charging units, such as batteries, and which fires
7 one or several barbs attached to a length of wire
8 and which, upon hitting a human, can send out
9 current capable of disrupting the person's nervous
10 system in such a manner as to render him incapable
11 of normal functioning, commonly referred to as a
12 stun gun or taser.

13 (vii) "Firearm ammunition" means any
14 self-contained cartridge or shotgun shell, by whatever
15 name known, which is designed to be used or adaptable
16 to use in a firearm, including but not limited to:

17 (A) any ammunition exclusively designed for
18 use with a device used exclusively for signaling or
19 safety and required or recommended by the United
20 States Coast Guard or the Interstate Commerce
21 Commission; or

22 (B) any ammunition designed exclusively for
23 use with a stud or rivet driver or other similar
24 industrial ammunition.

25 (viii) "Explosive" means, but is not limited to,
26 bomb, bombshell, grenade, bottle or other container
27 containing an explosive substance of over one-quarter
28 ounce for like purposes such as black powder bombs and
29 Molotov cocktails or artillery projectiles.

30 (ix) "Tool to defeat security mechanisms" means,
31 but is not limited to, handcuff or security restraint
32 key, tool designed to pick locks, or device or
33 instrument capable of unlocking handcuff or security
34 restraints, doors to cells, rooms, gates or other areas
35 of the penal institution.

36 (x) "Cutting tool" means, but is not limited to,

1 hacksaw blade, wirecutter, or device, instrument or
2 file capable of cutting through metal.

3 (xi) "Electronic contraband" means, but is not
4 limited to, any electronic, video recording device,
5 computer, or cellular communications equipment,
6 including, but not limited to, cellular telephones,
7 cellular telephone batteries, videotape recorders,
8 pagers, computers, and computer peripheral equipment
9 brought into or possessed in a penal institution
10 without the written authorization of the Chief
11 Administrative Officer.

12 (d) Bringing alcoholic liquor into a penal institution is a
13 Class 4 felony. Possessing alcoholic liquor in a penal
14 institution is a Class 4 felony.

15 (e) Bringing cannabis into a penal institution is a Class 3
16 felony. Possessing cannabis in a penal institution is a Class 3
17 felony.

18 (f) Bringing any amount of a controlled substance
19 classified in Schedules III, IV or V of Article II of the
20 Controlled Substance Act into a penal institution is a Class 2
21 felony. Possessing any amount of a controlled substance
22 classified in Schedule III, IV, or V of Article II of the
23 Controlled Substance Act in a penal institution is a Class 2
24 felony.

25 (g) Bringing any amount of a controlled substance
26 classified in Schedules I or II of Article II of the Controlled
27 Substance Act into a penal institution is a Class 1 felony.
28 Possessing any amount of a controlled substance classified in
29 Schedules I or II of Article II of the Controlled Substance Act
30 in a penal institution is a Class 1 felony.

31 (h) Bringing an item of contraband listed in paragraph (iv)
32 of subsection (c)(2) into a penal institution is a Class 1
33 felony. Possessing an item of contraband listed in paragraph
34 (iv) of subsection (c)(2) in a penal institution is a Class 1
35 felony.

36 (i) Bringing an item of contraband listed in paragraph (v),

1 (ix), (x), or (xi) of subsection (c)(2) into a penal
2 institution is a Class 1 felony. Possessing an item of
3 contraband listed in paragraph (v), (ix), (x), or (xi) of
4 subsection (c)(2) in a penal institution is a Class 1 felony.

5 (j) Bringing an item of contraband listed in paragraphs
6 (vi), (vii) or (viii) of subsection (c)(2) in a penal
7 institution is a Class X felony. Possessing an item of
8 contraband listed in paragraphs (vi), (vii), or (viii) of
9 subsection (c)(2) in a penal institution is a Class X felony.

10 (k) It shall be an affirmative defense to subsection (b)
11 hereof, that such possession was specifically authorized by
12 rule, regulation, or directive of the governing authority of
13 the penal institution or order issued pursuant thereto.

14 (l) It shall be an affirmative defense to subsection (a)(1)
15 and subsection (b) hereof that the person bringing into or
16 possessing contraband in a penal institution had been arrested,
17 and that that person possessed such contraband at the time of
18 his arrest, and that such contraband was brought into or
19 possessed in the penal institution by that person as a direct
20 and immediate result of his arrest.

21 (m) Items confiscated may be retained for use by the
22 Department of Corrections or disposed of as deemed appropriate
23 by the Chief Administrative Officer in accordance with
24 Department rules or disposed of as required by law.

25 (Source: P.A. 94-556, eff. 9-11-05.)

26 (720 ILCS 5/31A-1.2) (from Ch. 38, par. 31A-1.2)

27 Sec. 31A-1.2. Unauthorized bringing of contraband into a
28 penal institution by an employee; unauthorized possessing of
29 contraband in a penal institution by an employee; unauthorized
30 delivery of contraband in a penal institution by an employee.

31 (a) A person commits the offense of unauthorized bringing
32 of contraband into a penal institution by an employee when a
33 person who is an employee knowingly and without authority or
34 any person designated or authorized to grant such authority:

35 (1) brings or attempts to bring an item of contraband

1 listed in paragraphs (i) through (iv) of subsection (d) (4)
2 into a penal institution, or

3 (2) causes or permits another to bring an item of
4 contraband listed in paragraphs (i) through (iv) of
5 subsection (d) (4) into a penal institution.

6 (b) A person commits the offense of unauthorized possession
7 of contraband in a penal institution by an employee when a
8 person who is an employee knowingly and without authority of
9 any person designated or authorized to grant such authority
10 possesses contraband listed in paragraphs (i) through (iv) of
11 subsection (d) (4) in a penal institution, regardless of the
12 intent with which he possesses it.

13 (c) A person commits the offense of unauthorized delivery
14 of contraband in a penal institution by an employee when a
15 person who is an employee knowingly and without authority of
16 any person designated or authorized to grant such authority:

17 (1) delivers or possesses with intent to deliver an
18 item of contraband to any inmate of a penal institution, or

19 (2) conspires to deliver or solicits the delivery of an
20 item of contraband to any inmate of a penal institution, or

21 (3) causes or permits the delivery of an item of
22 contraband to any inmate of a penal institution, or

23 (4) permits another person to attempt to deliver an
24 item of contraband to any inmate of a penal institution.

25 (d) For purpose of this Section, the words and phrases
26 listed below shall be defined as follows:

27 (1) "Penal Institution" shall have the meaning
28 ascribed to it in subsection (c) (1) of Section 31A-1.1 of
29 this Code;

30 (2) "Employee" means any elected or appointed officer,
31 trustee or employee of a penal institution or of the
32 governing authority of the penal institution, or any person
33 who performs services for the penal institution pursuant to
34 contract with the penal institution or its governing
35 authority.

36 (3) "Deliver" or "delivery" means the actual,

1 constructive or attempted transfer of possession of an item
2 of contraband, with or without consideration, whether or
3 not there is an agency relationship;

4 (4) "Item of contraband" means any of the following:

5 (i) "Alcoholic liquor" as such term is defined in
6 Section 1-3.05 of the Liquor Control Act of 1934.

7 (ii) "Cannabis" as such term is defined in
8 subsection (a) of Section 3 of the Cannabis Control
9 Act.

10 (iii) "Controlled substance" as such term is
11 defined in the Illinois Controlled Substances Act.

12 (iii-a) "Methamphetamine" as such term is defined
13 in the Illinois Controlled Substances Act or the
14 Methamphetamine Control and Community Protection Act.

15 (iv) "Hypodermic syringe" or hypodermic needle, or
16 any instrument adapted for use of controlled
17 substances or cannabis by subcutaneous injection.

18 (v) "Weapon" means any knife, dagger, dirk, billy,
19 razor, stiletto, broken bottle, or other piece of glass
20 which could be used as a dangerous weapon. Such term
21 includes any of the devices or implements designated in
22 subsections (a) (1), (a) (3) and (a) (6) of Section 24-1
23 of this Act, or any other dangerous weapon or
24 instrument of like character.

25 (vi) "Firearm" means any device, by whatever name
26 known, which is designed to expel a projectile or
27 projectiles by the action of an explosion, expansion of
28 gas or escape of gas, including but not limited to:

29 (A) any pneumatic gun, spring gun, or B-B gun
30 which expels a single globular projectile not
31 exceeding .18 inch in diameter; or

32 (B) any device used exclusively for signaling
33 or safety and required or recommended by the United
34 States Coast Guard or the Interstate Commerce
35 Commission; or

36 (C) any device used exclusively for the firing

1 of stud cartridges, explosive rivets or industrial
2 ammunition; or

3 (D) any device which is powered by electrical
4 charging units, such as batteries, and which fires
5 one or several barbs attached to a length of wire
6 and which, upon hitting a human, can send out
7 current capable of disrupting the person's nervous
8 system in such a manner as to render him incapable
9 of normal functioning, commonly referred to as a
10 stun gun or taser.

11 (vii) "Firearm ammunition" means any
12 self-contained cartridge or shotgun shell, by whatever
13 name known, which is designed to be used or adaptable
14 to use in a firearm, including but not limited to:

15 (A) any ammunition exclusively designed for
16 use with a device used exclusively for signaling or
17 safety and required or recommended by the United
18 States Coast Guard or the Interstate Commerce
19 Commission; or

20 (B) any ammunition designed exclusively for
21 use with a stud or rivet driver or other similar
22 industrial ammunition.

23 (viii) "Explosive" means, but is not limited to,
24 bomb, bombshell, grenade, bottle or other container
25 containing an explosive substance of over one-quarter
26 ounce for like purposes such as black powder bombs and
27 Molotov cocktails or artillery projectiles.

28 (ix) "Tool to defeat security mechanisms" means,
29 but is not limited to, handcuff or security restraint
30 key, tool designed to pick locks, or device or
31 instrument capable of unlocking handcuff or security
32 restraints, doors to cells, rooms, gates or other areas
33 of the penal institution.

34 (x) "Cutting tool" means, but is not limited to,
35 hacksaw blade, wirecutter, or device, instrument or
36 file capable of cutting through metal.

1 (xi) "Electronic contraband" means, but is not
2 limited to, any electronic, video recording device,
3 computer, or cellular communications equipment,
4 including, but not limited to, cellular telephones,
5 cellular telephone batteries, videotape recorders,
6 pagers, computers, and computer peripheral equipment.

7 (e) A violation of paragraphs (a) or (b) of this Section
8 involving alcohol is a Class 4 felony. A violation of paragraph
9 (a) or (b) of this Section involving cannabis is a Class 2
10 felony. A violation of paragraph (a) or (b) involving any
11 amount of a controlled substance classified in Schedules III,
12 IV or V of Article II of the Illinois Controlled Substances Act
13 is a Class 1 felony. A violation of paragraph (a) or (b) of
14 this Section involving any amount of a controlled substance
15 classified in Schedules I or II of Article II of the Illinois
16 Controlled Substances Act is a Class X felony. A violation of
17 paragraph (a) or (b) involving an item of contraband listed in
18 paragraph (iv) of subsection (d)(4) is a Class X felony. A
19 violation of paragraph (a) or (b) involving an item of
20 contraband listed in paragraph (v) or (xi) of subsection (d)(4)
21 is a Class 1 felony. A violation of paragraph (a) or (b)
22 involving an item of contraband listed in paragraphs (vi),
23 (vii) or (viii) of subsection (d)(4) is a Class X felony.

24 (f) A violation of paragraph (c) of this Section involving
25 alcoholic liquor is a Class 3 felony. A violation of paragraph
26 (c) involving cannabis is a Class 1 felony. A violation of
27 paragraph (c) involving any amount of a controlled substance
28 classified in Schedules III, IV or V of Article II of the
29 Illinois Controlled Substances Act is a Class X felony. A
30 violation of paragraph (c) involving any amount of a controlled
31 substance classified in Schedules I or II of Article II of the
32 Illinois Controlled Substances Act is a Class X felony for
33 which the minimum term of imprisonment shall be 8 years. A
34 violation of paragraph (c) involving an item of contraband
35 listed in paragraph (iv) of subsection (d)(4) is a Class X
36 felony for which the minimum term of imprisonment shall be 8

1 years. A violation of paragraph (c) involving an item of
2 contraband listed in paragraph (v), (ix) or (x) of subsection
3 (d)(4) is a Class X felony for which the minimum term of
4 imprisonment shall be 10 years. A violation of paragraph (c)
5 involving an item of contraband listed in paragraphs (vi),
6 (vii) or (viii) of subsection (d)(4) is a Class X felony for
7 which the minimum term of imprisonment shall be 12 years.

8 (g) Items confiscated may be retained for use by the
9 Department of Corrections or disposed of as deemed appropriate
10 by the Chief Administrative Officer in accordance with
11 Department rules or disposed of as required by law.

12 (Source: P.A. 94-556, eff. 9-11-05.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.